

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 07, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington
resident,

Plaintiff,

v.

MILL BAY MEMBERS
ASSOCIATION, INC., a Washington
non-profit corporation; UNITED
STATES OF AMERICA; UNITED
STATES DEPARTMENT OF
INTERIOR; BUREAU OF INDIAN
AFFAIRS; FRANCIS ABRAHAM;
CATHERINE GARRISON;
MAUREEN MARCELLAY, MIKE
PALMER, also known as Michael H.
Palmer; JAMES ABRAHAM;
NAOMI DICK; ANNIE WAPATO;
ENID MARCHAND; GARY REYES;
PAULWAPATO, JR.; LYNN
BENSON; DARLENE HYLAND;
RANDY MARCELLAY; FRANCIS
REYES; LYDIA W. ARMEECHER;
MARY JO GARRISON; MARLENE
MARCELLAY; LUCINA O'DELL;
MOSE SAM; SHERMAN T.
WAPATO; SANDRA COVINGTON;
GABRIEL MARCELLAY; LINDA
MILLS; LINDA SAINT; JEFF M.

NO: 2:09-CV-18-RMP

ORDER DIRECTING
SURRESPONSE AND RESETTING
HEARING ON PLAINTIFFS'
MOTION FOR STAY OF
EXECUTION OF JUDGMENT

1 CONDON; DENA JACKSON; MIKE
2 MARCELLAY; VIVIAN PIERRE;
3 SONIA VANWOERKON; WAPATO
4 HERITAGE, LLC; LEONARD
5 WAPATO, JR.; DERRICK D.
6 ZUNIE, II; DEBORAH L.
7 BACKWELL; JUDY ZUNIE;
8 JAQUELINE WHITE PLUME;
9 DENISE N. ZUNIE;
10 CONFEDERATED TRIBES
11 COLVILLE RESERVATION; and
12 ALLOTTEES OF MA-8, also known
13 as Moses Allotment 8,
14 Defendants.

15 Upon review of Plaintiffs’ Motion for Stay of Execution of Judgment, ECF
16 No. 508, the Court finds that additional briefing is required on the issue of
17 irreparable harm.

18 Generally, pure economic harm does not inflict irreparable injury, “as money
19 lost may be recovered later.” *Idaho v. Coeur d’Alene Tribe*, 794 F.3d 1039, 1046
20 (9th Cir. 2015) (describing “irreparable harm” in the context of preliminary
21 injunctions). However, in their reply brief, Plaintiffs argue for the first time that
they will suffer irreparable harm in the form of financial loss, should they succeed
on appeal, because that financial loss is non-recoverable due to Defendants’
sovereign immunity. ECF No. 526 at 5 (citing *Idaho v. Coeur d’Alene Tribe*, 794
F.3d at 1046). Plaintiffs explain that they have made valuable improvements to the
land, and if those improvements are removed while their appeal is pending, they will
have no recourse due to sovereign immunity should they be successful on appeal.

1 Because the issue of sovereign immunity as it relates to irreparable harm was raised
2 for the first time in reply, the Court finds it necessary to direct the Defendants only
3 to file supplemental briefing on this discrete issue alone.

4 Previously, the Court expedited hearing on Plaintiffs' Motion to Stay
5 Execution of Judgment because the automatic stay of the relevant Judgment is set to
6 expire on August 10, 2020. However, as the Government has represented that it will
7 not remove Plaintiffs from MA-8 until after September 30, 2020, the Court finds that
8 an immediate hearing is no longer required. *See* ECF No. 524-5. The Court further
9 finds that because of the Plaintiffs' newly raised issues in their reply brief, the Court
10 needs additional time to resolve this significant issue thoroughly and fully.

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 1. Defendants are directed to file a **surreponse** on the discrete issue of
13 irreparable harm as it relates to Defendants' sovereign immunity in this
14 case by **August 14, 2020**.
- 15 2. Hearing on Plaintiffs' Motion for Execution of Stay of Judgment, **ECF No.**
16 **508**, is **STRICKEN** and **RESET** to **August 17, 2020**, without oral
17 argument.

18 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
19 Order and provide copies to counsel.

20 **DATED** August 7, 2020.

s/ Rosanna Malouf Peterson

ROSANNA MALOUF PETERSON
United States District Judge